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Washington, DC 20224

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Refer Reply To:

CC:ITA:2 – GENIN-154963-01

Date:

Dear [REDACTED]:

This responds to your letter of September 25, 2001. You requested general information about whether amounts paid for cayenne pepper, recommended by a naturopathic physician as a treatment for Raynaud's disease, qualify as an expense for medical care under § 213 of the Internal Revenue Code.

Section 213(a) allows as a deduction the expenses paid during the taxable year for medical care of the taxpayer, spouse, or dependent. Under § 213(d)(1)(A), an expense is for "medical care" if its primary purpose is the diagnosis, cure, mitigation, treatment, or prevention of disease.

The Income Tax Regulations state that the deduction for medical care expenses will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. An expense that is merely beneficial to the general health of an individual is not an expense for medical care. Section 1.213-1(e)(1)(ii).

A taxpayer who claims that an expense of a peculiarly personal nature is primarily for medical care must establish that fact. Among the objective factors that indicate that an otherwise personal expense is for medical care are the taxpayer's motive or purpose, recommendation by a physician, linkage between the treatment and the illness, treatment effectiveness, and proximity in time to the onset or recurrence of a disease. *Havey v. Commissioner*, 12 T.C. 409 (1949). The taxpayer must also establish that the expenses would not have been incurred "but for" the disease or illness. *Commissioner v. Jacobs*, 62 T.C. 813, 818 (1974) (legal costs related to taxpayer's divorce, claimed as treatment for depression, disallowed); *Altman v. Commissioner*, 53 T.C. 487 (1969) (medical deduction denied for golf expenses of taxpayer who had been playing golf for 30 years before incurring an illness).

While diagnosis of a medical condition by a doctor may be helpful or necessary to establish that an amount paid is for medical care and not some other purpose, there is no requirement that *treatment* must be provided by a doctor or other traditional health professional. Accordingly, in *Dickie v. Commissioner*, T.C. Memo 1999-138, the Court held that treatments directed by a naturopathic doctor may qualify as medical care. *See also, Crain v. Commissioner*, T.C. Memo 1986-138 (holistic healing center); *Tso v. Commissioner*, T.C. Memo 1980-399 (Native American healing ceremony performed by

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medicine man); Rev. Rul. 70-170, 1970-1 C.B. 51 ("patterning" exercises administered to a mentally retarded child by a non-professional individual).

Finally, the cost of food is not an expense for medical care to the extent the food constitutes a substitute for food that an individual would normally consume to meet nutritional requirements. Rev. Rul. 55-261, 1955-1 C.B. 307; *Harris v. Commissioner*, 46 T.C. 672 (1966).

Applying these principles, the cost of cayenne pepper may qualify as an expense for medical care if the taxpayer can substantiate all of the following circumstances: (1) The taxpayer (or a spouse or dependent) has a medical condition (disease, illness, or injury); (2) the taxpayer's purpose in purchasing the cayenne pepper is to treat or alleviate the medical condition; (3) the taxpayer would not have purchased the cayenne pepper "but for" the medical condition; and (4) the taxpayer is not consuming the cayenne pepper to satisfy normal nutritional requirements.

If you have any questions or require additional information please contact Donna M. Crisalli at (202) 622-7900.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Thomas D. Moffitt
Chief, Branch 2